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June 17, 2005

**CERTIFIED MAIL**

George Mitchell  
Plant Manager  
Longview Fibre Company  
5901 East Marginal Way S.  
Seattle, WA 98134

Dear Mr. Mitchell:

RE: MTCA Cleanup Order  
**Notice of Site Assessment Review**

On August 5, 1991, a hazardous waste permit (Ecology/EPA ID# WAD 00081 2909) was issued to the waste treatment and storage facility at 734 S Lucile St., now owned by the Philip Services Corporation (PSC). The permit included requirements for the facility's owner/operator to perform environmental investigations associated with releases from the facility, and to clean up contaminated media potentially posing unacceptable risks to human health or the environment. These requirements in the permit, described as RCRA *Corrective Action* requirements, were then carried out under the oversight of the US Environmental Protection Agency (EPA). In August of 2001 the facility's permit expired. EPA subsequently transferred oversight of the *Corrective Action* portion of the permit to the Washington State Department of Ecology. That transfer occurred in March of 2002.

Since that time the expired permit has remained in force, and has been modified but not replaced. In August of 2003 PSC completed closure of its Georgetown facility.

Ecology's current intent is to replace the PSC permit's *Corrective Action* groundwater cleanup requirements with requirements contained in a Model Toxics Control Act (MTCA) Order. Preparation of that Order is presently underway. As part of the effort to draft a MTCA Order for addressing contamination found downgradient of the PSC facility, Ecology is evaluating properties with known or potential environmental contamination within the general "affected area." Towards that end we are currently performing a preliminary review of file information for the Longview Fibre Co. operation and associated property located in south Seattle.

This review is being performed under Washington's Administrative Code 173-340-130(2-3), *information exchange and sharing*, which reflects an Ecology policy by which the Department requests persons who may have relevant environmental information to make that information available to Ecology for review. MTCA RCW 70.105D.030(1)(a)

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empowers Ecology to investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases, and when appropriate, to require the production of documents or other information that the Department deems necessary.

Your company's property has come to our attention due to its location and the presence of groundwater contamination in the immediate area, which may be indicative of releases from sources besides the PSC facility. In addition, a database search reported in the November 2003 PSC Remedial Investigation Report shows that the property is listed: a) as a small quantity hazardous waste generator; b) an *ERNS* site (meaning it has entered the USEPA emergency response notification system due to a release of oil and/or hazardous substances); c) on Ecology's Confirmed and Suspected Contaminated Sites List; and, d) as an *ICR* site, meaning that at one time a remedial action report was prepared and submitted to Ecology for the property. Furthermore, our records show that at one time underground storage tanks (USTs) were located on the property. In fact, a report was filed, acknowledging a leaking UST incident.

Groundwater contamination emanating from the PSC facility trends in a west-southwest direction. Trichloroethene (TCE) concentrations in groundwater, while relatively low approaching East Marginal Way near Fidalgo St., appear to increase significantly in an area near the northern end of your building along Fidalgo. In particular, these increases seem most obvious at the point shown on the enclosed figure as "Q32." The TCE at 25 feet below ground surface at this point was found to be as high as 6500 ug/l in April 2002<sup>1</sup>. Ecology believes the presence of these increased TCE concentrations, approaching the river some three quarters of a mile from the PSC facility, suggest the possibility of an additional source of TCE released in the local area.

We want to give you an opportunity to provide any additional information that we may not be aware of, including site investigation reports, cleanup reports, or other environmental information. In particular, information regarding current and historical site operations and processes and historical site investigations is requested. Please also complete the attached information request checklist (see Enclosure A). You will see that one item on the checklist asks you to tell us whether, should the need arise, you would be willing to either allow access to sample soils and/or groundwater on your property, or perform such an investigation yourself. This access may become necessary to adequately characterize the nature and extent of contamination and thereby protect human health and the environment.

You have been identified as the current plant manager at Longview Fibre's 5901 E. Marginal Way S. address, and our records indicate that your firm owns the property in question. However, please contact us as soon as possible if this is incorrect. Please also inform us if there are other persons/companies associated with this property who may have relevant information, and to whom we may direct a similar letter. Your assistance in gathering this information will help to ensure an accurate and thorough review.

To ensure a timely review, please send the requested information to the Northwest Regional Office of Ecology, at the address shown on the letterhead. Attention it to me, Ed Jones. If

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<sup>1</sup> This information is contained in Philip Services Corporation Technical Memoranda 8 (April 2002) and 9 (October 2002).

we do not hear from you, we will use what information we already have in performing our site review.

Ecology will use the information provided by you and others we contact to help determine the status of any other<sup>2</sup> "owners"/"operators," and other "facilities"/"sites" in the area, as defined by MTCA (please see Enclosure B). The Department appreciates your cooperation in this matter. If you have any questions regarding this letter or the investigation and cleanup of contamination associated with the PSC facility, please feel free to contact me at (425) 649-4449.

Sincerely,

Ed Jones  
Environmental Engineer  
Hazardous Waste and Toxics Reduction Program

EJ:sd

Enclosures

cc: A Smith, AAG  
Central Files

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<sup>2</sup> Besides PSC

**ENCLOSURE A**

**QUESTIONNAIRE CHECKLIST**

### **SITE ASSESSMENT INFORMATION REQUEST**

Please provide the following information to assist in Ecology's evaluation of the site. Address each item as completely as possible. When you cannot address a particular item because of a lack of information, please state so. Thank you.

1. **PROVIDE THE FOLLOWING BACKGROUND INFORMATION:**

- o Facility name and address.
- o Facility owner/operator name, title, address, and phone number.
- o Property owner (if different from facility owner/operator) name, address, and phone number.
- o Current use of site.
- o Past use of site: include all you know about previous owners and users of site, and associated dates.
- o Size of site (in acres or square feet).
- o Site security (is site completely or partially fenced, patrolled, etc.?).
- o Land uses immediately surrounding the site boundaries (e.g., site is surrounded by agricultural or commercial land, homes to north, etc.).

2. **PROVIDE A SITE MAP WITH THE FOLLOWING ITEMS IDENTIFIED:**

- o Building names and their functions (past and present).
- o All chemical and waste storage and disposal areas (buildings, ponds, landfills, piles, etc.); include inactive or abandoned areas.
- o Outside process areas, storage tanks, or waste treatment systems.
- o On-site wells (water supply, monitoring, dry wells, abandoned wells).

3. **PROVIDE THE FOLLOWING CHEMICAL/WASTE HANDLING INFORMATION:**

- o All chemicals used /stored at the site (solvents, pesticides, acids, bases, etc.). All waste products generated or stored at the site (waste solvents or oils, filter cake, spent plating solutions, metal grindings, etc.).
- o Approximate volumes of chemicals used and wastes generated per year, and maximum volume kept on-site.

- o Any on-site chemical or waste-treatment systems (flocculation/filtration, incineration, chemical or physical treatment, volume reduction, etc.).
- o Information on all past and present chemical and waste storage/disposal areas; include information on size, type, current or former contents, and condition of each. For example:

*"There are two 3,000-gallon steel underground tanks on-site; each presently contains about 500 gallons of gasoline. These were installed in 1988, and are thought to be in good condition. They have not been tested."*

*"There are five large tailings piles (size ranging from 20 to 20,000 cubic yards) on-site. They are unlined, have no containment structures, and consist of mill tailings with 2% copper and 0.5% arsenic. These piles have been in place since 1984."*

- o Type, quantity, and destination of all wastes removed from site (i.e., metal wastes landfilled at county dump site, used solvents recycled by ...).
- o Any spills or other releases of hazardous substances that have occurred at the site during your operation or ownership.
- o Any information you have about hazardous substances used, stored, or released at the site by prior owners or operators.

4. PROVIDE THE FOLLOWING PERMIT INFORMATION:

- o Identify all existing or expired regulatory permits. For each, provide information on the type of permit (NPDES, RCRA Interim Status, etc.), regulating agency (federal, state, sewerage agency), and issue and expiration dates.

5. PROVIDE THE FOLLOWING SAMPLING/CLEANUP INFORMATION:

- o Describe all environmental sampling/monitoring performed at site. Provide sampling results. Describe any soil excavations or removals, spill cleanups, groundwater treatment, etc., performed at site.
- o State whether, if requested by Ecology, you would be willing to provide access for environmental sampling on your property to the Philips Service Corporation, or would prefer to conduct any such sampling yourself (or through a consultant of your choosing).

MAIL TO:

Department of Ecology, NWRO  
ATTN: Ed Jones  
3190 160<sup>th</sup> Ave. SE  
Bellevue, WA 98008-5452

## ENCLOSURE B

### RCW 70.105D.020

#### Definitions.

(1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility, or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any



preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iv).

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

**RCW 70.105D.030**

**Department's powers and duties.**

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for

violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(12)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at

least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(7) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

#### **RCW 70.105D.040**

##### **Standard of liability -- Settlement.**

(1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

(b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;

(c) Any person who owned or possessed a hazardous substance and who by contract,

agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and

(e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

(i) An act of God;

(ii) An act of war; or

(iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the

property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit; including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the

development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.